

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACY MARY ESPINOZA,

Plaintiff,

v.

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,

Defendant.

Case No. EDCV 13-01820 AN

MEMORANDUM AND ORDER

Pursuant to the Court's Case Management Order, the parties have filed the Administrative Record ("AR") and a Joint Stipulation ("JS") raising one disputed issue. The parties have consented to proceed before the Magistrate Judge. The Court has carefully reviewed the parties' respective contentions in conjunction with the AR. This matter is now ready for decision.

Issue #1

Plaintiff contends that the Administrative Law Judge ("ALJ") erred by failing to consider the relevant medical evidence in assessing Plaintiff's residual functional capacity ("RFC"). (JS 4-9.)

In conducting an RFC assessment, the ALJ must consider the combined effects of a claimant's medically determinable impairments on the claimant's ability to perform sustainable work. 42 U.S.C. § 423(d)(2)(B); *Macri v. Chater*, 93 F.3d 540, 545 (9th Cir.

1 1996). Even those impairments that are not “severe” must be considered. 20 C.F.R. §§
2 404.1545(a); 416.945(a); *Celaya v. Halter*, 332 F.3d 1177, 1182 (9th Cir. 2003). “[A]n
3 RFC that fails to take into account a claimant’s limitations is defective.” *Valentine v.*
4 *Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). The ALJ must determine
5 a claimant’s limitations on the basis of “all relevant evidence in the record.” *Robbins v.*
6 *Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006).

7 Here, the ALJ determined that Plaintiff has the medically determinable severe
8 impairments of arthritis, fibromyalgia, obesity, generalized myalgias, chronic pain
9 syndrome, headaches, and depression. (AR 11.) The ALJ assessed Plaintiff with an RFC
10 for a limited range of light work.^{1/} (AR 13); *see* 20 C.F.R. §§ 404.1567(b), 416.967(b).

11 Plaintiff contends that the ALJ erred by failing to consider evidence of Plaintiff’s
12 edema and swelling in her lower extremities when determining her RFC. (JS 4-9.) The
13 medical record documents Plaintiff’s periodic episodes of edema and swelling in her feet,
14 ankles, and legs since August 2008. (AR 272, 323, 325, 332, 335-37, 340, 347, 429-30.)
15 Plaintiff’s doctors diagnosed peripheral edema (chronic), and recommended that Plaintiff
16 elevate her legs and use compression stockings to relieve her symptoms. (AR 273, 336,
17 340, 347.) Plaintiff reported that the swelling diminished when she lied down, and that
18 she used elevation in the management of her pain. (AR 263, 347.) At the administrative
19 hearing, Plaintiff testified that she continued to experience swelling in her ankles. (AR
20 48.)

21 The ALJ’s RFC assessment is not supported by substantial evidence because it fails
22 to address the treating physicians’ recommendations that Plaintiff elevate her legs to
23 relieve the symptoms caused by the edema. (AR 336, 340.) The ALJ also erred by failing

25 ^{1/} Specifically, the ALJ determined that Plaintiff is limited to: standing and/or
26 walking 30 minutes at a time, for a total of 6 hours in an 8-hour period; sitting 6 hours
27 in an 8-hour period, with brief position changes every hour; occasional postural activities
28 (i.e., bending, stooping, climbing stairs, and balancing); kneeling, crawling, squatting or
crouching rarely; and no climbing ladders, ropes or scaffolds, work at unprotected heights
or around moving machinery or other hazards, work involving high stress, hyper-
vigilance, intense concentration on the task at hand, fast-paced production requirements,
or assembly-line work. (AR 13.)

1 to address the severity of Plaintiff's edema and swelling, as required at step two of the
2 sequential analysis. *See* 20 C.F.R. § 404.1520(c) (at step two, the ALJ must determine
3 whether the claimant has any combination of impairments which significantly limits her
4 ability to do basic work activities), 416.920(c) (same). While an ALJ is not required to
5 discuss every piece of evidence or address every issue, he must explain why significant
6 probative evidence has been rejected. *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th
7 Cir. 1984). In this case, the medical evidence of Plaintiff's lower extremity edema and
8 the associated limitation of needing to elevate her legs was significant and should have
9 been addressed by the ALJ.

10 Plaintiff further alleges that the ALJ failed to properly assess functional limitations
11 associated with her frequent and severe headaches. (JS 6-9.) Plaintiff's history of
12 persistent headaches is documented in the medical record. (AR 269, 271, 273, 280, 286,
13 297, 300, 301, 308, 312, 316, 390, 418, 442.) Plaintiff testified that she suffers from
14 headaches on a daily basis, and experiences severe headaches associated with nausea and
15 dizziness every three months. (AR 47-48.) Plaintiff's treating pain specialist, Anita Pai,
16 M.D., diagnosed chronic migraines, probably due to tension headaches. (AR 269, 273,
17 390, 418.) In June 2011, Dr. Pai reported that Plaintiff's pain from her headaches and
18 other conditions was well controlled with medication. (AR 18, 419.)

19 The ALJ acknowledged Plaintiff's complaints about the severity and frequency of
20 her headaches and found that Plaintiff's headaches were a severe impairment. (AR 11,
21 14.) However, the ALJ ultimately decided that Plaintiff's headaches and other medically
22 determinable conditions were not severe enough to amount to a disability under the
23 Social Security Act. (AR 11, 13, 20-21.) To the extent there was a conflict in the evidence
24 regarding the impact of Plaintiff's headaches on her capacity to work, it was the
25 prerogative of the ALJ to resolve the conflict. *See Andrews v. Shalala*, 53 F.3d 1035,
26 1039 (9th Cir. 1995). The ALJ explained that although Plaintiff experienced some pain
27 and discomfort from her medically determinable conditions, there was no medical
28 evidence establishing functional restrictions in Plaintiff's ability to perform work related

1 activities beyond those assessed in Plaintiff's RFC. (AR 16, 18-19.) Rather, the medical
2 record showed that Plaintiff responded well to treatment to control her symptoms. (AR
3 18, 419.) Further, the ALJ found Plaintiff's subjective statements about the intensity,
4 persistence, and limiting effects of her symptoms to be less than fully credible. (AR 14-
5 16.) The ALJ's credibility determination is supported by abundant evidence in the record,
6 and is not challenged by Plaintiff. (AR 14-16.) Thus, the ALJ's consideration of
7 Plaintiff's headaches in the RFC assessment is supported by substantial evidence.

8 Accordingly, Plaintiff is entitled to remand on Issue #1 based upon the ALJ's
9 failure to properly consider evidence of Plaintiff's edema and swelling in her lower
10 extremities and related limitations. Plaintiff is not entitled to a reversal or remand on
11 Issue #1 with respect to the ALJ's consideration of Plaintiff's headaches in the RFC
12 assessment.

13 14 ORDER

15 The decision whether to remand for further proceedings or order an immediate
16 award of benefits is within the district court's discretion. *Harman v. Apfel*, 211 F.3d
17 1172, 1175-78 (9th Cir. 2000). When no useful purpose would be served by further
18 administrative proceedings, or where the record has been fully developed, it is
19 appropriate to exercise this discretion to direct an immediate award of benefits. *Id.* at
20 1179 ("the decision of whether to remand for further proceedings turns upon the likely
21 utility of such proceedings"). But when there are outstanding issues that must be resolved
22 before a determination of disability can be made, and it is not clear from the record the
23 ALJ would be required to find the claimant disabled if all the evidence were properly
24 evaluated, remand is appropriate. *Id.*

25 The Court finds a remand is appropriate because there are unresolved issues that,
26 when properly resolved, may ultimately still lead to a not disabled finding. *See INS v.*
27 *Ventura*, 537 U.S. 12, 16, 123 S. Ct. 353 (2002) (upon reversal of administrative
28 determination, "the proper course, except in rare circumstances, is to remand to the

1 agency for additional investigation or explanation”) (internal quotation marks and citation
2 omitted). Accordingly, the present case is remanded for further proceedings consistent
3 with this Memorandum and Order.

4 IT IS THEREFORE ORDERED that a judgment be entered reversing the
5 Commissioner’s final decision and remanding the case so the ALJ may make further
6 findings consistent with this Memorandum and Order.

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9 DATED: June 6, 2014



ARTHUR NAKAZATO
UNITED STATES MAGISTRATE JUDGE